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FEB 06 2002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TECH CENTER 1600/2900

In re the application of:

Munroe et al.

Group Art Unit: 1635

Serial Number: 09/581,252

Examiner: Nguyen, Lien-Chi A

#9

Filed: December 4, 2000

Attorney Docket No. 108074-00003

For: MAMMALIAN EDG-5 RECEPTOR HOMOLOGS

PETITION TO WITHDRAW HOLDING OF ABANDONMENT

Commissioner for Patents
Washington, D.C. 20231

Date: February 1, 2002

Sir:

Applicant has received a Notice of Abandonment dated December 4, 2001 in which the above-referenced case has been declared abandoned for failure to respond to an Office letter dated April 20, 2001, which was apparently a Notice to Comply to Nucleotide and/or Amino Acid Sequence Disclosure (hereinafter the "Notice").

Applicant has never received the Notice and informed the Examiner in charge of the case of such in the telephone conversation of November 27, 2001. The Examiner stated that proof of such an allegation was required. Applicant submits that the documents attached hereto are sufficient to prove that Applicant's representative never received a copy of the April 20, 2001 Notice.

To review, the Examiner in charge of the case states that that the Notice was mailed from the USPTO on April 20, 2001. However, no such Office letter was ever received by the firm. Attached are copies of the Declarations signed by Ms. Sheila Cooper-Loving (the docket clerk for the firm), Mr. Robert B. Murray (a partner in the firm and the attorney responsible for the above application), and Ms. Cindy Brooks (the secretary for Mr. Murray), detailing the mail-handling and docketing procedures for the firm, and detailing the reasons why it is apparent that no Office Action for the above application

was ever received by the firm.

It is noted that the mailing address of the firm was correctly listed as the correspondence address on the Filing Receipt mailed from the USPTO on December 19, 2000. The effectiveness of the correspondence address is demonstrated by the fact that the Filing Receipt was received by the firm.

It is also noted that any presumption that mail matter properly addressed, stamped and deposited in an appropriate receptacle is duly delivered is predicated on the fixed methods and systematic operation of the Postal Service, and that such a presumption can be rebutted. See Legille v. Dann, 544 F.2d 1 (CAFC 1976).

The effectiveness of the correspondence address has been demonstrated. Applicants' contention of non-receipt of the Office letter mailed April 20, 2001, is supported in the enclosed Declarations. Thus, it is respectfully submitted that the failure of the April 20, 2001 Office letter to reach the firm was not the fault of the firm in any way.

It is respectfully requested that the Office Action be re-mailed to the firm and that any holding of abandonment be withdrawn. See MPEP §711.02 and Delgar Inc. v. Schuyler, Commr. Pats., 172 USPQ 513 (D.D.C. 1971).

Any fees associated with this communication should be waived since the evidence submitted herewith shows that Applicants are in no way at fault for not responding to Office letter mailed April 20, 2001.

Should withdrawal from abandoned status not be granted immediately, this Petition should be considered to be a Petition to the Commissioner under 37 C.F.R. §§1.181-1.183, including a petition that all fees in connection therewith be waived because it is clear that Applicants are not at fault in this matter.

Should any such petition Under 37 C.F.R. §§1.181-1.183 not be immediately granted, this Request should be considered to be a Petition under (37 C.F.R. §1.137(a) or §1.137(b)), including a petition that all fees in connection therewith be waived because it is clear that Applicants are not at fault in this matter.

The Commissioner is hereby authorized to charge any fees associated with this communication to Deposit Account No. 01-2300.

Should the appropriate official of the U.S. Patent and Trademark Office have any questions, that official is requested to telephone Applicants' undersigned attorney.

Respectfully submitted,

ARENT FOX KINTNER PLOTKIN & KAHN, PLLC



D. Daniel Dzara, II
Attorney for Applicants
Registration No. 47,543

Customer No. 004372
1050 Connecticut Avenue, N.W., Suite 400
Washington, D.C. 20036-5339
Tel: (202) 857-6000
Fax: (202) 638-4810

DDD:

Enclosures: Notice of Abandonment
Copy of Declaration by Sheila Cooper-Loving
Copy of Declaration by Robert B. Murray
Copy of Declaration by Cindy Brooks

108074-00003



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/581,252	12/04/2000	Donald G. Munroe	P108074-0000	4192

7590 12/04/2001

Arent Fox Kintner Plotkin & Kahn
Suite 600
1050 Connecticut Avenue NW
Washington, DC 20036-5339

EXAMINER

NGUYEN, LIEN-CHI A

ART UNIT	PAPER NUMBER
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1635

DATE MAILED: 12/04/2001

8

RECEIVED
DEC 7 2001
Arent Fox
Docketing

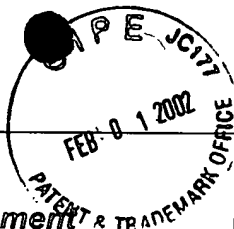
Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED
FEB 06 2002
TECH CENTER 1600/2900

RBM
REVIEWED IN
DOCKETING BY PA
DATE 12/10/01

RECEIVED

FEB 06 2002



Notice of Abandonment

Application No.

09/581,252

Examiner

Lauren Nguyen

Applicant(s)

MUNORE, DONALD G.

Art Unit

1635

TECH CENTER 1600/2800

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 20 April 2001.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance.
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file new formal drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed new formal drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ The proposed new formal drawings filed on _____ are not acceptable and the period for reply has expired.
 - (c) ☐ No proposed new formal drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

See Continuation Sheet



SEAN MCGARRY
PRIMARY EXAMINER

Item 7 - Other reasons for holding abandonment: Applicants have not replied to the Notice to Comply to Nucleotide and/or Amino Acid Sequence Disclosure (entered in the file as Paper No. 7) mailed on 4/20/2001. Examiner Nguyen contacted Ms. Cindy Brooks on 11/27/2001 via telephone to notify Applicants of the failure to respond to the Notice to Comply. At which time, Ms. Brooks noted that Applicants had not received the Notice to Comply. Without presentation of evidence to the contrary, the statutory period to respond to the Notice to Comply has expired and the application is in abandonment status. .

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

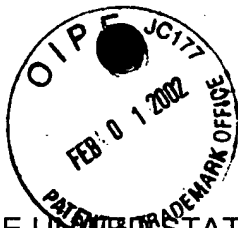
2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Munroe et al.

Group Art Unit: 1635

Serial Number: 09/581,252

Examiner: Nguyen, Lien-Chi A

Filed: December 4, 2000

Attorney Docket No. 108074-00003

For: MAMMALIAN EDG-5 RECEPTOR HOMOLOGS

DECLARATION

Assistant Commissioner for Patents
Washington, D.C. 20231

February 1, 2002

Sir:

I, Cindy Brooks, a citizen of the United States, hereby declare and state:

1. I am a secretary at the firm of Arent Fox Kintner Plotkin & Kahn PLLC (referred to herein as the firm).

2. As a secretary at the firm, I am responsible for assisting Mr. Robert B. Murray. My duties being responsible for assisting Mr. Murray include following the docketing and USPTO filing procedures for the firm. Mr. Murray is responsible for the above application.

3. Upon examining Mr. Murray's personal docket book after receiving the Notice of Abandonment of December 4, 2001 from Examiner Nguyen in connection with the above application, I noted that Mr. Murray's personal docket book contains no notation of any due date for a response to an Office Action in the above application on May 20, 2001 (i.e., one month from the alleged date of mailing of the Office Action in the above application). ATTACHMENT 1 is a true and correct copy of Mr. Murray's personal docket book covering May 20, 2001.

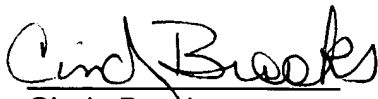
4. Upon examining the cover of the file for the above application after receiving the Notice of Abandonment of December 4, 2001 from Examiner Nguyen in reference to the above application, I noted that there is no notation of any due date for a response to an Office Action in the above application. ATTACHMENT 2 is a true and correct (reduced-size) copy of the cover of the file for the above application.

5. I have been instructed on the importance of ensuring that Mr. Murray's personal docket book and the cover of each file being handled by Mr. Murray reflect every due date established by mail received from the USPTO concerning any application being handled by Mr. Murray.

6. I am not aware of any occurrence where an Office Action (in an application where the applicant has not instructed us to abandon the application) was mailed to the firm and was not docketed in the master docket, and in Mr. Murray's personal docket book that I maintain.

7. Based on the above, it is my belief that the April 20, 2001 Office letter concerning the above application was never received by the firm.

8. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


Cindy Brooks

2/1/02
Date

Enclosures:

ATTACHMENT 1
ATTACHMENT 2

May 2001
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1 2 3 4 5
6 7 8 9 10 11 12
13 14 15 16 17 18 19
20 21 22 23 24 25 26
27 28 29 30 31

June 2001
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Saturday May 19

Armed Forces Day (US) 139/226

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AT-A-GLANCE®

21 May Monday

141/224 Victoria Day (Canada)

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June 2001
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r Ref.# B-148 CIP DIV
905-677-9595

A. : UHNEY:

PATENT NO.: _____
ISSUE DATE: _____

(NEW _____ CONT / _____ DIV ✓ CIP _____ REISSUE _____)

INVENTOR(S) Munir Ali

SERIAL NO. _____ FILED _____

TITLE MAMMALIAN EDG-5 Receptor Homologs

ASSIGNEE: NDS Allelix Corp.

PRIORITY: _____

RELATED U.S. APPLICATIONS

SPECIAL CLIENT INSTRUCTIONS:

ATTORNEY FILE REVIEW

DATE _____ INIT. _____

INIT. _____

DATE _____ INIT. _____

INIT. _____

DATE _____ INIT. _____

INIT. _____

OFFICE ACTIONS	DUE DATE	RESPONSES
		New App'n f 6/26/00
	Due 9/4/00	
	10/4/00 (E1)	
	11/4/00 (E2)	
	12/4/00 (E3)	Dec. & EOT(3) filed 12/4/00
		 VISION #: 60692 SERIAL #: 'M: 108074-0

VISION #: 60692

SERIAL #:

'M: 108074-00003

CLIENT NAME

NPS Alexis Corp

CLIENT REFERENCE

6-148-HSCepdiv MATTER NO.: 00003

CLIENT NO.

108017

Dir = 108074 08003

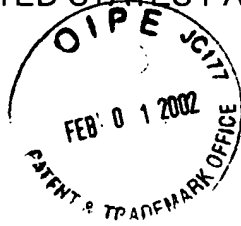
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Munroe et al.

Serial Number: 09/581,252

Filed: December 4, 2000



Group Art Unit: 1635

Examiner: Nguyen, Lien-Chi A

Attorney Docket No. 108074-00003

For: MAMMALIAN EDG-5 RECEPTOR HOMOLOGS

DECLARATION

Assistant Commissioner for Patents
Washington, D.C. 20231

February 1, 2002

Sir:

I, Sheila Cooper-Loving, a citizen of the United States, hereby declare and state:

1. I was the docket clerk at the firm of Arent Fox Kintner Plotkin & Kahn PLLC (referred to herein as the firm) as of April 20, 2001.

2. As the docket clerk at the firm at that time, my duties included following the docketing and USPTO filing procedures for the firm, including reviewing all mail received from the USPTO and docketing all due dates created by that mail in the Master Docket, which I maintained in the manner described in the Appendix attached to the Declaration by Mr. Robert B. Murray.

3. Upon examining the Master Docket after receiving the Notice of Abandonment of December 4, 2001 from Examiner Nguyen in reference to the above application, I noted that the Master Docket contains no notation of any due date for a response to the Office letter in the above application on May 20, 2001 (i.e., one month from the apparent date of

mailing of the Office letter in the above application). ATTACHMENT 1 is a true and correct copy of the printout of the Master Docket for May 20, 2001.

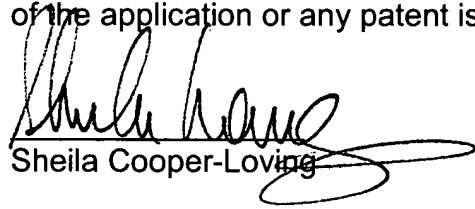
4. I have been instructed on the importance of ensuring that the Master Docket reflect every due date established by mail received by the firm from the USPTO.

5. I am not aware of any occurrence where an Office Action (in an application where the applicant has not instructed us to abandon the application) was mailed to the firm and received by the firm, but was not docketed in the Master Docket.

6. Based on the above, it is my belief that the April 20, 2001 Office letter concerning the above application was never received by the firm.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the

like so made are punishable by fine or imprisonment, or both, under Section 1001 Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


Sheila Cooper-Loving

2/1/02
Date

Enclosure:

ATTACHMENT 1

Prosecution History

Case Number	Sub Case	Country	Attorney	Date Due	Reason for Date/ Indicator	Action Type	Application Number	Filing Date	Status
108074-00003	US	RBM		26-Jun-2000	FILE DIVISIONAL Due Date	FILE DIV APPLN.	09581252%4192	26-Jun-2000	Abandoned
					Resp. Sent Date: 26-Jun-2000	Date Taken: 26-Jun-2000			
108074-00003	US	RBM		04-Sep-2000	MISSING REQMTS. Due Date	PCT MISSING REQUIREMENTS	09581252%4192	26-Jun-2000	Abandoned
					Resp. Sent Date: 04-Dec-2000	Date Taken: 04-Dec-2000			
108074-00003	US	RBM		26-Sep-2000	Information Disclosure Stmt Due Date	Information Disclosure Stmt	09581252%4192	26-Jun-2000	Abandoned
108074-00003	US	RBM		04-Oct-2000	MISSING REQ E-1 Due Date	PCT MISSING REQUIREMENTS	09581252%4192	26-Jun-2000	Abandoned
					Resp. Sent Date: 04-Dec-2000	Date Taken: 04-Dec-2000			
108074-00003	US	RBM		04-Nov-2000	MISSING REQ E-2 Due Date	PCT MISSING REQUIREMENTS	09581252%4192	26-Jun-2000	Abandoned
					Resp. Sent Date: 04-Dec-2000	Date Taken: 04-Dec-2000			
108074-00003	US	RBM		04-Dec-2000	MISSING REQ E-3 Due Date	PCT MISSING REQUIREMENTS	09581252%4192	26-Jun-2000	Abandoned
					Resp. Sent Date: 04-Dec-2000	Date Taken: 04-Dec-2000			
108074-00003	US	RBM		26-Dec-2000	Foreign Filing Needed? Due Date	Foreign Filing	09581252%4192	26-Jun-2000	Abandoned
					Resp. Sent Date: 26-Dec-2000	Date Taken: 26-Dec-2000			

Country Application

Friday, February 01, 2002

Case Number: 108074-00003	Country: US	SubCase:
Client: NPS ALLELIX	United States of America	
Case Type: DIV	Application Status: Abandoned	
Application Number: 09581252%4192	Filing Date: 26-Jun-2000	
Patent Number:	Issue Date:	
Publication Number:	Publication Date:	
Priority Number:	Priority Date:	
Tax Schedule: LE	Expiration Date:	
Parent Number:	Tax Start Date:	
Agent:		
Agent Reference No.:		

List Of Actions

Action(s) Due	Due Date		Action Taken
FILE DIVISIONAL	26-Jun-2000	Due Date	26-Jun-2000
MISSING REQMTS.	04-Sep-2000	Due Date	04-Dec-2000
Information Disclosure Stmt	26-Sep-2000	Due Date	
MISSING REQ E-1	04-Oct-2000	Due Date	04-Dec-2000
MISSING REQ E-2	04-Nov-2000	Due Date	04-Dec-2000
MISSING REQ E-3	04-Dec-2000	Due Date	04-Dec-2000
Foreign Filing Needed?	26-Dec-2000	Due Date	26-Dec-2000
MISSING REQ E-4	04-Jan-2001	Due Date	04-Dec-2000
MISSING REQ E-5	04-Feb-2001	Final	04-Dec-2000
Application Sta Follow Up Date	14-Feb-2001	Due Date	14-Aug-2000
Foreign Filing Follow Up Date	26-Jun-2001	Due Date	26-Dec-2000
N/ABANDONMENT DTD	04-Dec-2001	Reminder	04-Dec-2001
Application Status Check	26-Dec-2001	Due Date	14-Aug-2000

User ID: AustinP

Date Created: 19-Jun-2000

Last Update: 10-Dec-2001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Munroe et al.

Serial Number: 09/581,252

Filed: December 4, 2000



Group Art Unit: 1635

Examiner: Nguyen, Lien-Chi A

Attorney Docket No. 108074-00003

For: MAMMALIAN EDG-5 RECEPTOR HOMOLOGS

DECLARATION

Assistant Commissioner for Patents
Washington, D.C. 20231

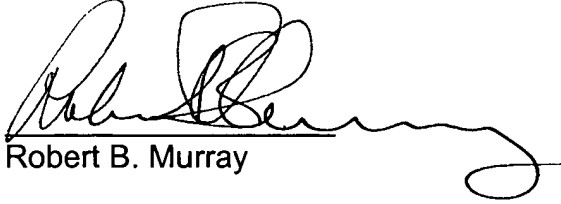
February 1, 2002

Sir:

I, Robert B. Murray, a citizen of the United States, hereby declare and state:

1. I am a partner in the firm of Arent Fox Kintner Plotkin & Kahn PLLC (referred to herein as the firm).
2. Attached hereto is an APPENDIX, which is a true rendition of the general procedures for the firm with regard to docketing due dates created by mail received from the U.S. Patent and Trademark Office (USPTO).
3. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the

like so made are punishable by fine or imprisonment, or both, under Section 1001 Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Robert B. Murray

Date 2/1/02

Enclosure:

APPENDIX

APPENDIX

Docketing and USPTO Filing Procedures for the Firm of Arent Fox Kintner Plotkin & Kahn PLLC as of April 20, 2001

When a piece of mail received from the U.S. Patent and Trademark Office (referred to herein as "USPTO mail") is received by the firm of Arent Fox Kintner Plotkin & Kahn, PLLC (referred to herein as "the firm"), that piece of USPTO mail is first given to the docket clerk in the docketing department of the firm together with the firm's file (referred to herein as "the file") for the application referred to in the USPTO mail. The type of mail, together with the firm's client number and matter number for that file, is entered into a PTO mail log by the docket clerk.

The docket clerk is also responsible for maintaining a "Master Docket", which is a computer-compiled list containing (among other things) (1) calendar days arranged chronologically, and (2) all due dates created by USPTO mail for all cases being handled by the firm. When a piece of USPTO mail presents a due date for taking action in a particular application, the docket clerk enters the firm docket number for that application, and the action which is required to satisfy that due date, into the master docket under the date corresponding to the due date created by that piece of USPTO mail.

After the docket clerk has entered into the master docket every due date created by a piece of USPTO mail, the file, together with the USPTO mail, is then given to the principal attorney (referred to herein as "the attorney") responsible for the prosecution of that application.

The secretary responsible for assisting that attorney (referred to herein as "the secretary") maintains a personal docket book for the attorney. When the attorney receives a piece of USPTO mail which creates a due date, the secretary enters that due date in his or her personal docket book. After the secretary has docketed any due date(s) created by the piece of USPTO mail, he or she gives the file and the piece of USPTO mail to the attorney. In addition, the secretary marks the cover of the file to indicate the due date and the action required.